

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

BARRIER WEST, INC.

Employer,

and

MACHINISTS DISTRICT LODGE W-1

Union.

NO. 19-RC-15300

EMPLOYER'S BRIEF IN SUPPORT OF
EXCEPTIONS TO REGIONAL
DIRECTOR'S REPORT AND
RECOMMENDATION ON OBJECTION

The Employer, Barrier West, Inc. ("Barrier West") submits this brief in support of its exceptions to the Regional Director's Report and Recommendation on Objection (the "Report"), issued by Region 19 Director Richard Ahearn (the "Regional Director") on June 9, 2010.¹

I. STATEMENT OF THE CASE

A. Substantive Background

This matter arises out of a secret ballot election held on May 24, 2010 in Aberdeen, Washington conducted by Region 19 of the NLRB to determine whether Barrier West employees would be represented by the Machinists Union.² Daniel Alderman was one of the employees included on the Excelsior list that Barrier West submitted to the National Labor Relations Board (the "Board") prior to the election.³ Declaration of Michael Reynvaan

¹ A true and correct copy of the Report is submitted herewith.

² All dates hereinafter are in 2010 unless otherwise specified.

³ Copies of Barrier West's objections and supporting evidence, including the supporting declarations from Daniel Alderman, Jeff Miller, and Michael Reynvaan—provided to the Regional Director with Barrier West's objection on May 28—are submitted herewith.

("Reynvaan Decl."), ¶ 2. It is undisputed that Mr. Alderman was eligible to vote in the election and that 25 of the 26 eligible voters voted with 13 in favor of the union and 12 opposed. Report, p. 1. Mr. Alderman was the 26th vote.

On May 15—a little over a week before the election—Mr. Alderman suffered a massive heart attack in Aberdeen, Washington. Declaration of Daniel Alderman ("Alderman Decl."), ¶ 2. He was transported from Aberdeen to Seattle where he was admitted to Virginia Mason Hospital and underwent successful triple bypass surgery on May 17. Id. Unfortunately, Mr. Alderman suffered a stroke shortly after his surgery which required him to remain hospitalized through the date of the election. Id. at ¶¶ 2-4.

On May 23, Barrier West supervisor Jeff Miller and his wife visited Mr. Alderman at the hospital. Declaration of Jeff Miller ("Miller Decl."), ¶ 3. Mr. Miller discussed the election with Mr. Alderman at which time Mr. Alderman told Mr. Miller that he would like to participate in the election. Id. Mr. Alderman asked Mr. Miller if there was any way that he could vote in the election, even if from the hospital, since he was physically incapable of traveling to the election site the next day. Id. Mr. Miller agreed to check with Barrier West and find out. Id.

On the morning of May 24, Mr. Miller relayed Mr. Alderman's concerns to Barrier West's Treasurer and Secretary, George Donovan who called Michael Reynvaan, the Company's outside counsel. Id. at ¶ 4. Mr. Donovan asked Mr. Reynvaan if there was any process or mechanism by which Mr. Alderman could participate in the election. Mr. Reynvaan immediately placed a call to Board Agent Michael Snyder and explained to Mr. Snyder that one of the employees on the Excelsior list would not be able to appear in person to vote in the election that day, but he did want to vote. Id. Mr. Reynvaan told Mr. Snyder that Mr. Alderman had suffered a heart attack a week or so earlier and had been hospitalized for triple bypass heart surgery, but suffered a stroke during his recovery. Id. Because of his medical condition, his doctors had extended his hospitalization past the date of the election. Id. Mr.

Reynvaan asked Mr. Snyder if there was "any way for Mr. Alderman to vote in the election." Mr. Snyder told Mr. Reynvaan that Board policy was to not allow any "absentee ballots." Id. Mr. Reynvaan asked if it was possible to arrange some sort of remote access voting for someone with this type of medical condition. Id. Mr. Snyder responded that there were no exceptions to the Board's rule; eligible voters needed to vote in person. Id. Following his conversation with Mr. Snyder, Mr. Reynvaan called Mr. Donovan at Barrier West and told him that, according to Board Agent Snyder, there was no possible way for Mr. Alderman to vote in the election and he, therefore, would not be able to vote. Id. at ¶ 3. As a result of the Board's decision, Mr. Alderman was denied the opportunity to vote in the election.

B. Procedural Background

A Board Agent conducted the secret ballot election on May 24 in accordance with the terms of the parties' Stipulated Election Agreement (the "Agreement"), a copy of which is submitted herewith. At the conclusion of the election, the Board Agent prepared a Tally of Ballots which listed the following results:

Approximate number of eligible voters.....	26
Void ballots.....	0
Votes cast for Petitioner.....	13
Votes cast against participating labor organization.....	12
Valid votes counted.....	25
Challenged ballots.....	0
Valid votes counted plus challenged ballots.....	25

Report, p. 1.

On May 28, Barrier West filed a timely objection to the election and to conduct affecting the election results. Barrier West's objection provided in pertinent part,

Barrier employee Daniel Alderman was at all relevant times eligible to vote in the above-referenced election. Mr. Alderman clearly expressed a desire to vote in the election, did everything within his power to vote in the election, and was nonetheless denied an opportunity to adequately participate in the election. Denying Mr. Alderman an opportunity to participate in the election affected the result of the election.

On June 4, Barrier West submitted evidence in support of its objections, including three sworn declarations. On June 9, Region 19 Director Richard Ahearn issued his Report and Recommendation on Objection, recommending that Barrier West's objection be overruled and the election certified. Barrier West now submits this timely exception to the Regional Director's recommendation.

II. ARGUMENT

A. Refusal to Accommodate Disability Constitutes Objectionable Conduct Warranting a New Election

The most disconcerting—and completely inaccurate—piece of the Regional Director's report is his conclusion that Barrier West presented "no evidence that would indicate that Alderman's failure to vote was the result of non-compliance by the Region with the disability accommodation provisions of the Representation Casehandling Manual or of the Accommodation provisions contained in Section 4 of the Stipulated Election Agreement." Report, p. 5. Barrier West's evidence not only *indicates* non-compliance with both the Casehandling Manual and the Agreement, it unequivocally *establishes* non-compliance. It is literally undisputed that Mr. Alderman was eligible to vote, but physically incapable of doing so without accommodation based on a substantial physical impairment. He requested an accommodation as soon as practicable and the Board claimed that its policy was to not allow any exception to in-person voting and refused to provide him with the assistance he required to participate in the election. As explained below this evidence is more than sufficient to establish not only a clear violation of federal disability statutes but also non-compliance with the Board's affirmative obligations to accommodate individuals with disabilities under its own policies.

1. Refusal to Accommodate Violates the Federal Statute and Regulations Incorporated in the Parties' Agreement

Section four of the parties' Agreement provides as follows:

ACCOMMODATIONS REQUIRED. All parties should notify the Regional Director as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503,⁴ and who in order to participate in this election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

The federal regulations found at 29 C.F.R. § 100.501 and following, entitled, "Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Labor Relations Board," were established to "effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies" including the National Labor Relations Board. 29 C.F.R. § 100.501. Section 100.503 contains the following definitions:

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills *to have an equal opportunity to participate in, and enjoy the benefits of*, programs or activities conducted by the agency. . . .

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment . . . Major life activities includes functions such as caring for one's self, performing manual tasks, walking, . . . speaking, breathing, learning, and working.

Qualified individual with handicaps means-- . . . an individual with handicaps who meets the *essential eligibility requirements for participation in*, or receipt of benefits from *[a] program or activity*.

⁴ The Agreement contains a typographical error. It mistakenly references 29 C.F.R. § 100.603 (section on debt collection procedures) instead of 29 C.F.R. § 100.503 ("Definitions" section of regulations governing "Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Labor Relations Board").

Id. at § 100.503 (emphasis added). Section 100.530 lists the general prohibitions against discrimination applicable to the NLRB. For example, under these regulations, "[n]o qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency." Id. at § 100.530(a).

The Board is also prohibited from "directly or through contractual or other arrangements, utilize[ing] criteria or *methods of administration* the purpose or *effect of which would – defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.*" Id. at § 100.530(b)(3)(ii) (emphasis added).

Mr. Alderman is a qualified individual with a handicap. As a result of his heart attack, triple bypass surgery, and stroke, he now has one or more physical impairments that substantially limit major life activities including—most notably—walking and speaking. Nonetheless, he was undisputedly eligible to vote in the election. He expressed his desire to vote and—in compliance with Section four of the Agreement—asked for assistance as soon as practicable. Under Section 4 and 29 C.F.R. § 100.530, the NLRB was required to provide him with appropriate "services or devices" (such as an absentee ballot or other off-site voting option) that would enable him to "have an equal opportunity to participate in" the election. The Board refused to do so. Instead it elected to adopt a "method of administration ...the effect of which ... defeat[ed] . . . accomplishment of the objective" of the election in violation of Section Four of the agreement and 29 C.F.R. Section 100.530(b)(3)(ii).

The Regional Director relies on Section 11302.4 of the Casehandling Manual to justify the Board's decision not to provide Mr. Alderman with an appropriate accommodation. That provision provides in pertinent part, "the Board does not provide absentee ballots. Specifically, ballots for voting by mail should not be provided to, inter alia, those who are in the Armed Forces, ill at home or in the hospital, on vacation, or on leave of absence due to their own

decision or condition." While this provision is arguably valid on its face, in this case it was applied to deny a qualified individual with handicaps "an equal opportunity to participate in" an election conducted by the NLRB. This *application* of Section 11302.4 is unlawful and runs directly counter to the NLRB's legal obligations under Section 504 of the Rehabilitation Act, as amended, and 29 C.F.R. Section 100.501 *et seq.*, as well as other provisions of the Casehandling Manual itself. See Section 11302.2 ("The polling place should be accessible to all voters. *Special assistance should be provided, where requested and necessary, to accommodate handicapped individuals*") (emphasis added). The Board cannot use an admittedly non-binding policy to shirk its affirmative legal obligation to accommodate qualified individuals with handicaps, such as Mr. Alderman.

The authority cited by the Regional Director is not to the contrary. In support of his application of Section 11302.4, the Regional Director cites NLRB v. Cedar Tree Press, Inc., 169 F.3d 794 (1999). However, Cedar Tree Press does not deal with refusal to accommodate an individual with a physical or mental handicap. Rather, in that case, the employee at issue was on an elective personal vacation to Mexico. Contrary to the Regional Director's assertion that this distinction is "not determinative"—the refusal to accommodate an employee's vacation plans is factually and legally distinct from the refusal to accommodate an employee's physical handicap. One refusal is legally permissible under the controlling statute and regulations; the other is not. To the extent the Board's policy does not recognize this distinction it unlawfully discriminates against individuals with disabilities. The Regional Director does not cite to a single case or Board decision upholding Section 11302.4 in the context of an individual with a physical handicap. That is because there is none. As explained above, any such decision would impermissibly condone discrimination based on physical handicaps in violation of federal law.

Mr. Alderman is a qualified individual with a handicap who requested an accommodation so that he could have an equal opportunity to participate in a Board election. The Board flatly refused to even consider or discuss any accommodation for Mr. Alderman and

stated instead that there are "no exceptions" to its policy. In doing so it failed to comply with its obligations under Section Four of the parties' Agreement and, more importantly, under 29 C.F.R. Section 100.501 *et seq.* The Board's objectionable conduct unquestionably affected the outcome of the election. A new election should be ordered and Mr. Alderman should be permitted to participate with an appropriate accommodation.

B. Response to Regional Director's Other Erroneous Arguments and Conclusions

1. Inability to Vote was the Result of Board Conduct

On page three of the Regional Director's Report, he asserts that Mr. Alderman's inability to vote in the election had nothing to do with conduct on the part of the Board. See Report, p. 3 ("[T]here is no evidence, or even argument that [Alderman's] absence was related to conduct on the part of the Union, the Employer or the Board"). However, as the Regional Director acknowledges on page two of his report, Mr. Alderman was unable to participate in the election not because of his hospitalization, but because the "Board Agent *declined to make an exception* to the rule concerning absentee voting," and thus failed to accommodate Mr. Alderman's disability. Id. at p. 2 (emphasis added). Mr. Alderman's inability to vote was the direct result of Board conduct.

2. General Principle of Lemco Applies

The Regional Director takes great pains to distinguish the facts of Lemco Construction, Inc., 283 NLRB 459 (1987) from the present case. See Report, p. 4. However, while the facts may be somewhat distinguishable, the underlying principle applies broadly, well beyond the specific facts of that case. As the Regional Director acknowledges on page four of the Report, "Lemco supports the principle that certifications of an election are appropriate when 'employees are not prevented from voting by the conduct of a party *or by unfairness in the scheduling or mechanics of the election.*'" Report, p. 4 (emphasis added). Mr. Alderman was prevented from

voting by unfairness in the mechanics of the election; specifically, the Board refused to accommodate his disability and allow him to vote. This conduct violated not only the principle enunciated in Lemco, but 29 C.F.R. Section 100.530 as well. See 29 C.F.R. §100.530(b)(3)(ii) (NLRB may not utilize "methods of administration" which have the effect of impairing accomplishment of the objectives of a program or activity – in this case voting in an election).

3. Contractual Obligations Do Not Preempt the NLRB's Duty to Comply with Disability Laws

The Regional Director also argues that accommodating Mr. Alderman's disability by permitting some manner of absentee or off-site voting could be considered a material breach of the parties' Agreement. See Report, pp. 5-6. However, as explained above, Section Four of the Agreement specifically anticipates reasonable accommodations to allow qualified individuals with handicaps—such as Mr. Alderman—to participate in the election. Moreover, to the extent the Agreement could operate to prevent accommodation of a qualified individual, it would effectively condone disability discrimination and, therefore, be illegal and unenforceable.

III. CONCLUSION

For all of the foregoing reasons, the Board should reject the Regional Director's recommendation that Barrier West's objection should be overruled and the results of the election certified. Instead, the Board should sustain Barrier West's objection and order a new election consistent with the Board's well-established policy of non-discrimination against qualified individuals with handicaps.

Signed at Seattle, Washington, this 23 day of June, 2010.



MICHAEL T. REYNVAAN
MARALEE M. DOWNEY

Perkins Coie LLP

1201 Third Avenue, Suite 4800

Seattle, WA 98101-3099

Telephone: 206.359.8000

Facsimile: 206.359.9000

Attorneys for Barrier West, Inc.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

RECEIVED

JUN 10 2010

PERKINS COIE

Barrier West, Inc.

Employer

and

Case 19-RC-15300

International Association of Machinists and
Aerospace Workers, District Lodge W-1

Petitioner

**REGIONAL DIRECTOR'S REPORT AND
RECOMMENDATION ON OBJECTION**

On April 27, 2010,¹ I approved a Stipulated Election Agreement (Agreement) in this matter. On May 24, a Board Agent conducted a secret ballot election in accordance with the Agreement's terms. The employees who were eligible to vote in the election included:

All full-time and regular part-time woods drivers, paper drivers, highway drivers, yard truck drivers, low bed drivers, equipment operators, laborers and maintenance employees employed by the Employer at or out of its Aberdeen, Washington facility; excluding all other employees, office clerical employees, confidential employees, managerial employees, and guards and supervisors as defined in the Act.

When the voting was over, the Board Agent prepared a Tally of Ballots and served the parties with a copy. The Tally listed the following results:

Approximate number of eligible voters	26
Void ballots	0
Votes cast for Petitioner	13
Votes cast against participating labor organization	12
Valid votes counted	25
Challenged ballots	0
Valid votes counted plus challenged ballots	25

¹ All dates hereinafter are in 2010 unless otherwise specified.

On May 28 the Employer filed one timely objection to the election and to conduct affecting the election results. Copies of the Employer's objection were served upon the other parties. The objection is attached and incorporated as part of this Report.

Pursuant to the terms of the Stipulated Election Agreement and pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned Regional Director caused an investigation to be made of the objection to the election. As set forth below, I find that the objection does not warrant setting aside the election.

OBJECTION

The Employer's objection alleges that one employee, Daniel Alderman, through no fault of his own, was prohibited from voting in the election due to hospitalization in Seattle, Washington as a result of a heart attack on May 15, and a subsequent stroke. Pursuant to the Stipulated Election Agreement, the election occurred on May 24 from 12 noon to 5:00 p.m. at the Employer's facility in Aberdeen, Washington. As the Employer explains, during a visit to Alderman in the hospital by Operations Manager Jeff Miller on May 23, Miller learned that Alderman desired to participate in the election, scheduled for the following day. On the morning of the election Miller contacted the Employer's Treasurer and Secretary, George Donovan, concerning the issue, who in turn referred the matter to counsel for the Employer. When the Employer's counsel contacted the Board and asked a Board Agent if there was any way for Alderman to vote, he was told by the Board Agent that Board policy was to not allow absentee ballots. The Board Agent declined to make an exception to the rule concerning absentee voting and thus Alderman was the only individual among the 26 eligible voters who did not vote.

DISCUSSION

Based on a careful review of the evidence as recited by the Employer, and relevant Board precedent, I find that Alderman's inability to vote does not constitute objectionable conduct that warrants setting aside the election.

The Board has long accepted general responsibility for establishing a procedure for the conduct of its elections which gives all eligible employees an opportunity to vote, *Yerges Van Liners*, 162 NLRB 1259 (1967). The Board does not, however, assume responsibility for employees who are unable to vote due to factors outside of the control of the parties to an election. For instance, in *Versail Manufacturing, Inc.*, 212 NLRB 592 (1974) the Board refused to set aside an election where an employee, whose vote may have been determinative, was prevented from voting when his vehicle was stolen while he was returning to the employer's facility. As the Board reasoned, "the fact that required the *Yerges* election to be set aside was that the employee was caused to miss the election by the Employer, a party to the proceeding. The same protective policy would be applicable if the petitioning union, or the Board itself, prevented an eligible employee from voting. It would be inapplicable, of course, if the crucial employee was prevented from voting by reason of sickness or some other unplanned occurrence beyond the control of the parties, the Board, or the employees," *Versail Manufacturing* at 593. Further, in determining whether to set aside an election based on an eligible voter's inability to exercise the right to vote, the burden is on the objecting party to come forward with evidence of party causation in support of its objection, *Sahuaro Petroleum and Asphalt Company*, 306 NLRB 586, 587 (1992) (election upheld where the objecting union failed to produce evidence showing that an employee's late return from his route and subsequent failure to vote was attributable to the employer).

In the instant case, there is no argument that Alderman was unable to vote for any reason other than his hospitalization, a factor undoubtedly outside of the control of the parties to the election. Certainly Alderman's situation is unfortunate and regrettable. This, circumstance, however, does not make his inability to appear at the election site during polling hours for the purposes of voting objectionable when there is no evidence, or even argument, that his absence was related to conduct on the part of the Union, the Employer or the Board.

The Employer also implicitly suggests that some alternate arrangements should have been made in order to permit Alderman to vote, citing *Lemco Construction, Inc.*, 283 NLRB 459 (1987) as standing for the proposition that where an eligible employee was not afforded an adequate opportunity to vote, the Board should decline to issue a certification and direct a second election. First, I note that the analysis of *Lemco Construction* is inapposite to the instant situation. In *Lemco*, the Board dealt with the question of whether to set aside an election when only one of eight eligible voters cast a ballot. In determining whether such low turnout necessitated a new election, the Board reversed previous decisions focusing on whether a "representative" complement of employees voted, and instead held that new elections would not be ordered, solely due to low voter participation. With 25 of 26 eligible employees voting here, there is no sound argument that this election should be overturned on such grounds. Moreover, *Lemco* supports the principle that certifications of an election are appropriate when "employees are not prevented from voting by the conduct of a party or by unfairness in the scheduling or mechanics of the election," *Lemco Construction* at 460.

To the extent that the Employer argues that alternative arrangements should have been made to permit Alderman to vote, following the Employer's notification to the Region of Alderman's condition only hours before the election was scheduled to begin, I note that Section 11302.4 of the Board's Representation Casehandling Manual provides that "the Board does not provide absentee ballots. Specifically, ballots for voting by mail should not be provided to, inter alia, those who are in the Armed Forces, ill at home or in a hospital, on vacation, or on leave of absence due to their own decision or condition." [Emphasis added.] This policy was upheld by the Third Circuit in *NLRB v. Cedar Tree Press, Inc.*, 169 F.3d 794 (1999) where the Court rejected an employer's argument that the election in which the union received a majority of the valid votes cast, should be overruled as the Board refused to send an absentee ballot to an employee on vacation. While I recognize the fact that the employee in *NLRB v. Cedar Tree*

Press, supra, was unable to attend the election in question as he was on vacation while employee Alderman in the instant case was hospitalized, this distinction is not determinative as under Board policy both are accorded the same status. Furthermore, although the Employer equates the failure to create alternate voting arrangements for Alderman with disability discrimination, the Employer presents no evidence that would indicate that Alderman's failure to vote was the result of non-compliance by the Region with the disability accommodation provisions of the Representation Casehandling Manual² or of the Accommodation provisions contained in Section 4 of the Stipulated Election Agreement.³

Finally, the Board has long held that election agreements are "contracts" binding on the parties that executed them, *Barcelona Shoe Corp.*, 171 NLRB 1333 (1968) and, as such, it will set aside an election where a material term of the agreement has been breached. In *KCRA-TV*, 207 NLRB 1288 (1984) for example, the Board ordered a new election where, in the context of a mixed manual/mail ballot election, the Region mailed ballots to two employees even though under the agreement both were to vote in the manual portion of the election. The terms of the Stipulated Election Agreement in this case, signed by both the Employer and Union, provided for a manual election to occur from 12:00 noon to 5:00 p.m. on May 24 at the Employer's facility in Aberdeen, Washington. No provision was made for balloting by mail or otherwise. Consequently, if Alderman had been provided with a mail ballot on the day of the manual election, or in some other way permitted to vote in a manner not contemplated by the Stipulated Election Agreement, any such arrangement could be grounds for setting aside the election due

² See, for instance, Section 13202 of the Manual.

³ With respect to the disability accommodation clause of the Stipulated Election Agreement, I note that not only did the Employer contact the Region concerning Alderman only hours before the election was scheduled to begin, hardly the advance notice requested in Section 4, but also the location of the polling place in Aberdeen, Washington is at least a two hour drive from the Seattle hospital at which Alderman was a patient, thus further rendering any potential alternate voting arrangement for Alderman, even if such were appropriate, to be problematic. Moreover, the thrust of the accommodation clause appears to address accommodations at the site of the election, a consideration not apparently applicable in these circumstances.

to a breach of a material term of the agreement, a result inconsistent with my obligations under the Act.

CONCLUSION

Based on the above precedent, and accepting the facts as presented by the Employer, I recommend that the Employer's objection be overruled in its entirety. Because I am recommending that the Employer's objection be overruled, I further recommend that a Certification of Representative issue.

RIGHT TO FILE EXCEPTIONS

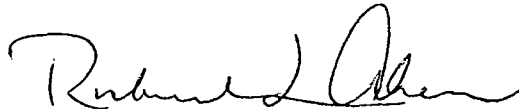
As provided in Section 102.69 of the Board's Rules and Regulations, any party may, within fourteen (14) days from the date of the issuance of this Report, file with the Board in Washington, D.C., eight (8) copies of exceptions to such Report together with a supporting brief, if desired. A copy of such exceptions, if filed, must be timely served upon the other parties and upon the Regional Director.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board website: www.nlrb.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits which a party has submitted to the Regional Director in support of its objections and which are not included in the Report are not part of the record before the Board

unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.

DATED at Seattle, Washington on the 9th day of June, 2010.

A handwritten signature in black ink, appearing to read "Richard L. Ahearn", written over a horizontal line.

Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174



1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
PHONE 206.359.8000
FAX 206.359.9000
www.perkinscoie.com

Michael T. Reynvaan
PHONE (206) 359-8469
FAX (206) 359-9469
EMAIL MReynvaan@perkinscoie.com

May 28, 2010

BY HAND DELIVERY

Richard L. Ahearn
Regional Director
National Labor Relations Board, Region 19
Room 2948
Henry M. Jackson Federal Building
915 Second Avenue
Seattle, WA 98174-1078

**Re: Barrier West, Inc.
Case No. 19-RC-15300**

Dear Mr. Ahearn:

Enclosed are the original and five copies of Barrier West, Inc.'s objection in this matter.

Very truly yours,



Michael T. Reynvaan

MTR:jld

Enclosures

NOTED/STAMP
8h 01 W 52 L... and
RETURN
61 NOV 15-2010
RECEIVED

73553-0001/LEGAL18398380 1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES
MENLO PARK · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

BARRIER WEST, INC.

Employer,

and

MACHINISTS DISTRICT LODGE W-1

Union.

NO. 19-RC-15300

EMPLOYER'S OBJECTION

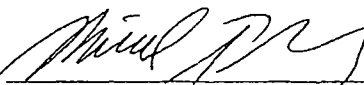
Pursuant to NLRB Rules and Regulations Section 102.69(a), Barrier West, Inc. ("Barrier"), through its undersigned counsel of record, hereby objects to the conduct of the election in this proceeding and to conduct that affected the results of the election.

Objection No. 1: Barrier employee Daniel Alderman was at all relevant times eligible to vote in the above-referenced election. Mr. Alderman clearly expressed a desire to vote in the election, did everything within his power to vote in the election, and was nonetheless denied an opportunity to adequately participate in the election. Denying Mr. Alderman an opportunity to participate in the election affected the result of the election.

DATED this 28th day of May, 2010.

PERKINS COIE

By



Michael T. Reynvaan, WSBA #12943

NOTED IN THE

Attorneys for Petitioner Barrier West, Inc.

RECEIVED
NLRB-REGION 19

STAMP
and
RETURN



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174-1078

Telephone: (206) 220-6300
Toll Free: 1-866-667-6572
Facsimile: (206) 220-6305
Agency Web Site: www.nlrb.gov

May 28, 2010

Michael T. Reynvaan, Attorney
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101

RECEIVED
JUN 01 2010
PERKINS COIE LLP

Re: **Barrier West, Inc.**
Case 19-RC-15300

Your objections to the election conducted in the above case were received this date.

If your objections were not accompanied by prima facie evidence in support thereof, such evidence is now required. Please submit all documentary evidence in your possession and a list of the names and addresses of all witnesses you expect to substantiate the allegations set forth in your objections together with a concise summary of their anticipated testimony. The summary should be specific as to the date, time and locations of the actions and incidents you allege to be objectionable, the names of all individuals who were present when the alleged misconduct took place and the name(s) of the person(s) who perpetrated the conduct you allege to be objectionable. A hearing on objections will be scheduled if a prima facie case is established.¹

If the requested evidence is not received by close of business **June 4, 2010**, a report on your objections will issue immediately based upon the evidence before us at that time.

If a preliminary investigation determines that a hearing on objections is necessary, it is anticipated that the hearing will be held at **Seattle, Washington** during the week beginning **June 14, 2010**. All parties should be prepared to discuss available dates during that week for those participating in a hearing, including any witnesses you intend to call in support of your position on the objections.

Sincerely,

Richard L. Ahearn
Regional Director

cc: Mr. Bill Quigg, Barrier West, Inc., 210 Commerce St, Aberdeen, WA 98520

¹ Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the record in objections cases where no hearing is held consists of the objections which were filed, all documentary evidence relied upon by the Regional Director in the Regional Director's Report or Decision, any briefs or other legal memoranda submitted by the parties, and any other motions, rulings or Orders of the Regional Director. Section 102.69(a).

NOTICE OF BARGAINING OBLIGATION

As a result of the representation election recently conducted, a labor organization has received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment commences on the date of the election.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are subsequently overruled and the labor organization is certified as the employees' collective bargaining representative, *THE EMPLOYER'S OBLIGATION TO ABSTAIN FROM MAKING UNILATERAL CHANGES TO BARGAINING UNIT EMPLOYEES' TERMS AND CONDITIONS OF EMPLOYMENT BEGINS ON THE DATE OF THE ELECTION*, not the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances¹, an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period that objections are pending where the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities that could accrue if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective bargaining representative, it violates Sections 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of bypassing, undercutting, and undermining the labor organization's status as the statutory representative of the employees. It is of no consequence that the changes may have been motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: (1) restore the status quo ante; (2) bargain, upon request, with the labor organization with respect to these changes; and (3) compensate employees for monetary losses incurred, with interest, as a result of the unilateral implementation of these changes, until such date as the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

In essence, the employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, as long as THE EMPLOYER GIVES SUFFICIENT NOTICE TO THE LABOR ORGANIZATION CONCERNING THE PROPOSED CHANGE(S), NEGOTIATES IN GOOD FAITH WITH THE LABOR ORGANIZATION, UPON REQUEST, and GOOD FAITH BARGAINING BETWEEN THE EMPLOYER AND THE LABOR ORGANIZATION LEADS TO AGREEMENT OR OVERALL LAWFUL IMPASSE

¹ Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.



1201 Third Avenue, Suite 4800

Seattle, WA 98101-3099

PHONE 206.359.8000

FAX 206.359.9000

www.perkinscoie.com

Michael T. Reynvaan
PHONE (206) 359-8469
FAX (206) 359-9469
EMAIL MReynvaan@perkinscoie.com

June 4, 2010

BY HAND DELIVERY

Richard L. Ahearn
Regional Director
National Labor Relations Board, Region 19
Room 2948
Henry M. Jackson Federal Building
915 Second Avenue
Seattle, WA 98174-1078

**Re: Barrier West, Inc.
Case No. 19-RC-15300**

Dear Mr. Ahearn:

Enclosed are three sworn declarations in support of Barrier West, Inc.'s objection in this matter. The declarations contain the witnesses' names along with the substance of the witnesses' anticipated testimony, which is also outlined below. Please let me know if you would like to interview any of these witnesses in person.

A. Underlying Facts

Dan Alderman was one of the employees included on the Excelsior list that Barrier West, Inc. submitted to the Board on May 4, 2010. On May 15, 2010—a little over a week before the election—Mr. Alderman suffered a massive heart attack in Aberdeen, Washington. He was transported from Aberdeen to Seattle where he was admitted to Virginia Mason Hospital and underwent successful triple bypass surgery on May 17, 2010. Unfortunately, Mr. Alderman suffered a stroke shortly after his surgery which required him to remain hospitalized through the date of the election.

73553-0001/LEGAL18434050 1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES · MENLO PARK
OLYMPIA · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

Richard L. Ahearn

June 4, 2010

Page 2

On May 23, 2010, Barrier West, Inc. employee Jeff Miller and his wife visited Mr. Alderman at the hospital. Mr. Miller discussed the election with Mr. Alderman and Mr. Alderman told Mr. Miller that he would like to participate in the election. Mr. Alderman asked Mr. Miller if there was any way that he could vote from the hospital, since he was physically incapable of traveling to the election site. Mr. Miller agreed to check with Barrier West, Inc. and find out.

On the morning of May 24, 2010, Mr. Miller relayed Mr. Alderman's concerns to Barrier West, Inc.'s Treasurer and Secretary, George Donovan who called me, the Company's outside counsel. Mr. Donovan asked me if there was any process or mechanism by which Mr. Alderman could participate in the election. I immediately placed a call to Board agent Michael Snyder. I explained to Mr. Snyder that one of the employees on the Excelsior list would not be able to appear in person to vote in the election that day, but he did want to vote. I told Mr. Snyder that Mr. Alderman had suffered a heart attack a week or so earlier and had been hospitalized for triple bypass heart surgery, but suffered a stroke during his recovery. Because of his medical condition, his doctors had continued his hospitalization past the date of the election. I asked Mr. Snyder if there was any way for Mr. Alderman to vote in the election. Mr. Snyder told me that Board policy was to not allow any "absentee ballots." I asked if it was possible to arrange some sort of remote access voting for someone with this type of medical condition. Mr. Snyder responded that there were no exceptions to the Board's rule; eligible voters needed to vote in person. Following my conversation with Mr. Snyder, I called Mr. Donovan at Barrier West, Inc. and told him that the Board had informed me that there was no possible way for Mr. Alderman to vote in the election and he, therefore, would not be able to vote.

B. Argument and Authority in Support of Objection

It is well-established that "*the fundamental purpose of a Board election is to provide employees with a meaningful opportunity to express their sentiments concerning representation for the purpose of collective bargaining.*" Lemco Construction, Inc., 283 NLRB 459, 124 LRRM 1329, 1330 (1987) (emphasis added). It is undisputed that Barrier West, Inc. employee Daniel Alderman was eligible to vote, expressed a clear desire to vote, and did everything within his power to exercise his right to vote. Unfortunately, the Board denied Mr. Alderman "an adequate opportunity to participate in the balloting," *id.*, not through any fault of his own, but because of the presence of a physical disability that prohibited him from accessing the election site. Where, as here, it has been shown by objective evidence that an eligible employee was not afforded an

Richard L. Ahearn

June 4, 2010

Page 3

"adequate opportunity" to vote, the Board should "decline to issue a certification and direct a second election." Id.

Barrier West, Inc. is aware that the NLRB's Casehandling Manual states that absentee ballots "should not be sent to those who are in the Armed Forces, are ill at home or in the hospital, are on vacation, or are on leave of absence due to their own decision or condition." NLRB Casehandling Manual, § 11302.4. It is also aware that even though the language in the Casehandling Manual is not binding on the Board,¹ application of the absentee ballot policy has been upheld on at least two occasions. See Cedar Tree Press, 169 F.3d 794 (3rd Cir. 1999); KCRA-TV, 271 NLRB 207, 117 LRRM 1145 (1984). Both of these decisions are clearly distinguishable from the present case. In Cedar Tree Press, the employee at issue was on an elective personal vacation in Mexico. He *chose* not to be present for the election. In KCRA-TV, one employee was on a personal vacation and one was with a family member that was ill. Again, both employees *chose* (albeit for arguably good reasons) to be in a place other than the election site. Neither case involved an eligible voter who was ready and willing to participate in the election, but unable to access the election site because of a physical disability. Mr. Alderman did not have a choice. He was unable to leave his hospital bed. Had he been physically able to access to the election site, he would have done so.

While the absentee ballot policy enunciated in the non-binding Casehandling Manual may be desirable from an administrative perspective (see Cedar Tree Press, 160 LRRM at 2687-89), ease of administration is not a justification for disability discrimination. Even if the absentee ballot policy is not discriminatory on its face, its application in cases such as Mr. Alderman's serves to unlawfully disenfranchise disabled employees from the voting process.

¹ See Introduction to Casehandling Manual, "Purpose of the Manual" ("The Manual is not a form of binding authority, and the procedures and policies set forth in the Manual do not constitute rulings or directives of the General Counsel or the Board. The Manual is not intended to be a compendium of either substantive or procedural law, nor can it be a substitute for a knowledge of the law. Although it is expected that the Agency's Regional Directors and their staffs will follow the Manual's guidelines in the handling of cases, *it is also expected that in their exercise of professional judgment and discretion, there will be situations in which they will adapt these guidelines to circumstances. Thus, the guidelines are not intended to be and should not be viewed as binding procedural rules.*" (emphasis added)).

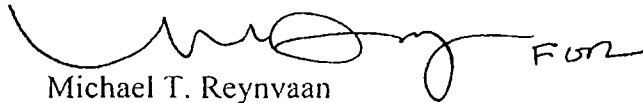
Richard L. Ahearn
June 4, 2010
Page 4

C. Conclusion

For the above stated reasons, the election should be set aside and a new election conducted in which Mr. Alderman—an eligible employee—will be given an adequate opportunity to cast his vote.

Please let me know promptly if you need further information in order to complete your investigation of Barrier West, Inc.'s objection.

Very truly yours,

 F 672

Michael T. Reynvaan

MTR:jld

Enclosures

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

BARRIER WEST, INC.

Employer,

and

MACHINISTS DISTRICT LODGE W-1

Union.

NO. 19-RC-15300

DECLARATION OF MICHAEL T.
REYNVAAN IN SUPPORT OF
EMPLOYER'S OBJECTION

I, Michael T. Reynvaan, state as follows:

1. I am one of the attorneys representing the Employer in this matter and I have personal knowledge of the facts stated herein.
2. On the morning of May 24, 2010, I called NLRB Board Agent, Michael Snyder, at (206) 220-6332 and told him that one of the employees on the Excelsior list, Daniel Alderman, would not be able to appear in person to vote in the election that day, but he did want to vote. I explained to Mr. Snyder that Mr. Alderman had suffered a heart attack a week or so earlier, had been hospitalized at Virginia Mason Hospital in Seattle for triple bypass heart surgery, but also had suffered a stroke during his recovery. Because of his medical condition, his doctors had continued his hospitalization past the date of election. I asked Mr. Snyder if there was any way for Mr. Alderman to vote in the election. Mr. Snyder told me that the Board policy was to not allow any "absentee ballots." I asked if it was possible to arrange some other sort of remote access voting for somebody with this kind of medical condition. Mr. Snyder responded that there were no exceptions to the Board's rule that eligible voters needed to vote in person.

DECLARATION OF MICHAEL T.
REYNVAAN - 1
73553-0001/LEGAL18400127 1

3. I then called George Donovan, Secretary and Treasurer of Barrier West, Inc. and told him that the Board had informed me that there was no possible way for Mr. Alderman to vote in the election and he, therefore, would not be able to vote.

I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

Signed at Seattle, Washington, this ~~5th~~ ^{4th} day of June, 2010.

MR 4th



MICHAEL T. REYNVAAN

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

BARRIER WEST, INC.

Employer,

and

MACHINISTS DISTRICT LODGE W-1

Union.

NO. 19-RC-15300

DECLARATION OF JEFF MILLER IN
SUPPORT OF EMPLOYER'S OBJECTION

I, Jeff Miller, state as follows:

1. I am over the age of 18, competent to testify, and make this declaration based on my personal knowledge.
2. I work as an Operations Manager for Barrier West, Inc. I am responsible for supervising a number of employees including Dan Alderman. On May 15, 2010, I learned that Dan had suffered a heart-attack in Aberdeen, Washington. Dan was transported from Aberdeen to Seattle where he was admitted to Virginia Mason Hospital and successfully underwent triple bypass surgery on May 17, 2010. Unfortunately, Dan suffered a stroke shortly after his surgery and his doctor required him to stay in the hospital longer than anticipated.
3. On May 23, 2010, my wife and I went to visit Dan in the hospital. I spoke with Dan about the election scheduled for May 24, 2010. Dan told me he wanted to vote in the election and asked me if there was any way he could cast his vote from the hospital, since he was physically incapable of traveling to the election site. I agreed to check with Barrier West and see if there was anyway Dan could vote.

4. On May 24, 2010, I spoke with Barrier West's Treasurer and Secretary, George Donovan and told him Dan wanted to vote and asked him if there was any way to arrange for him to vote.

I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

Signed at Aspen, Washington, this 3 day of June, 2010.


JEFF MILLER

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

BARRIER WEST, INC.

Employer,

and

MACHINISTS DISTRICT LODGE W-1

Union.

NO. 19-RC-15300

DECLARATION OF DANIEL
ALDERMAN IN SUPPORT OF
EMPLOYER'S OBJECTION

I, Daniel Alderman, state as follows:

1. I am over the age of 18, competent to testify, and make this declaration based on my personal knowledge.

2. I work for Barrier West as a Commercial Truck Driver. On May 15, 2010, I suffered a heart-attack in Aberdeen, Washington. I was transported from Aberdeen to Seattle where I was admitted to Virginia Mason hospital and successfully underwent triple bypass surgery on May 17, 2010. I was originally scheduled to return home before May 24, 2010. Unfortunately, I suffered a stroke shortly after my surgery which required me to stay in the hospital longer than anticipated.

3. On May 23, 2010, my supervisor, Jeff Miller, and his wife came to visit me in the hospital. Jeff and I talked about the election scheduled for May 24, 2010. I told Jeff that I wanted to vote in the election and I asked him if there was any way I could vote from the hospital, since I was physically incapable of traveling to the election site. Jeff agreed to check with Barrier West and see if it was possible for me to have an opportunity to vote.

4. I remained in the hospital recovering from my surgery and stroke until June 2, 2010.

I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

Signed at ABERDEEN, Washington, this 4 day of June, 2010.

DANIEL ALDERMAN
DANIEL ALDERMAN



United States Government
NATIONAL LABOR RELATIONS BOARD

Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174-1078

Telephone: (206) 220-6300
Toll Free: 1-866-667-6572
Facsimile: (206) 220-6305
Agency Web Site: www.nlrb.gov

April 30, 2010

Michael T. Reynvaan, Attorney
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101

RECEIVED
MAY 03 2010
PERKINS COIE LLP

Re: **Barrier West, Inc.**
Case 19-RC-15300

Enclosed is a copy of the approved AMENDED Stipulated Election Agreement for your records.

Please contact this office if there are any questions.

Sincerely,

A handwritten signature in black ink, reading "Richard L. Ahearn", is positioned below the word "Sincerely,".

Richard L. Ahearn
Regional Director

Enclosures

cc: Mr. Bill Quigg, Barrier West, Inc., 210 Commerce St, Aberdeen, WA 98520

Claudio Figueroa, Grand Lodge Representative, Machinists District Lodge W-1, 620 Coolidge Dr, Suite 130,
Folsom, CA 95630-3182

Noel Willet, BR/Org., Machinists District Lodge W-1, 25 Cornell Ave, Gladstone, OR 97027-2547

APR-29-2010 08:49

NLRB REG 19 SEATTLE

206 220 6305 P.02

Case Name: Barrier West, Inc.
Case 19-RC-15300

AMENDMENT TO STIPULATED ELECTION AGREEMENT

The parties agree that paragraph 12 below replaces paragraph 12 of the Consent Election Agreement approved by the Regional Director on April 27, 2010.

12. DATE, HOURS, AND PLACE OF ELECTION.

Date: May 24, 2010

Hours: 12 noon to 5 p.m.

Place: The Employer's premises located at 210 Commerce Street,
Aberdeen, Washington.

Employer: Barrier West, Inc.

/s/ Michael Regavan
(Name)

4/29/10
(Date)

Union: International Association of Machinists and Aerospace Workers, District Lodge W-1

Caudin R. Figueroa
(Name)

4/29/10
(Date)

Phil M.
(Recommended by) Board Agent

4/29/10
(Date)

R. J. All
(Approved by) Regional Director, Region 19

4/29/2010
(Date)

TOTAL P.02

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on June 23, 2010, she caused to be served on the persons listed below in the manner shown, a copy of the foregoing document:

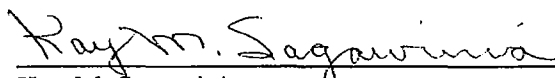
Richard L. Ahearn
Regional Director
National Labor Relations Board, Region 19
Henry M. Jackson Federal Building
915 Second Avenue, Room 2948
Seattle, WA 98174-1078

- ☐ United States Mail, First Class
- ☐ Via Overnight Delivery
- ☒ By Messenger
- ☐ By Facsimile
- ☐ By eFiling

Claudio Figueroa
International Association of Machinists
& Aerospace Workers, AFL-CIO
620 Coolidge Drive, Suite 130
Folsom, CA 95630

- ☒ United States Mail, First Class
- ☐ Via Overnight Delivery
- ☐ By Messenger
- ☐ By Facsimile
- ☐ By eFiling

Dated at Seattle, Washington, this 23rd day of June, 2010.


Kay M. Sagawinia


CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on June 24, 2010, she caused to be served on the person listed below in the manner shown, a copy of the foregoing document:

Claudio Figueroa
International Association of Machinists
& Aerospace Workers, AFL-CIO
620 Coolidge Drive, Suite 130
Folsom, CA 95630

- ☐ United States Mail, First Class
- ☒ Via Overnight Delivery
- ☐ By Messenger
- ☐ By Facsimile
- ☐ By eFiling

Dated at Seattle, Washington, this 24th day of June, 2010.


Kay M. Sagawinia

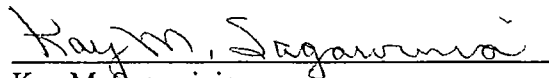
CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on June 23, 2010, she caused to be served a copy of the foregoing document in the manner shown below on:

National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570-0001

- ☐ United States Mail, First Class
- ☐ Via Overnight Delivery
- ☒ By Messenger
- ☐ By Facsimile
- ☐ By eFiling

Dated at Seattle, Washington, this 23rd day of June, 2010.


Kay M. Sagawinia

ORDER SECTION
NLRB

2010 JUN 23 PM 4:38

RECEIVED